IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9269 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANJULABEN SOMABHAI PATEL

Versus

DIVISIONAL CONTROLLER

Appearance:

1. Special Civil Application No. 9269 of 2000

MR BG JANI for Petitioner No. 1

MR HS MUNSHAW for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 07/01/2002

ORAL JUDGEMENT

Heard Ms.Parul Patel, learned advocate for Mr.B. G. Jani, appearing on behalf of the petitioner.

RULE. Mr.Jayesh Barot, learned advocate for Mr.H.S.Munshaw, appearing on behalf of the respondent No.1 waives service of Rule for respondent No.1.

#. Brief facts giving rise to the present petition are as under :-

The husband of the petitioner was serving with the respondent Corporation in Himmatnagar Depot as driver and expired during the course of employment on 25th December, 1992. The petitioner had applied for compassionate appointment by application dated 24th November, 1994 as write in Bharuch Division being the legal heir of deceased Somabhai Jethabhai Patel. The Divisional Controller of Himmatnagar Division replied the petitioner by letter dated 20th January, 1995 that the application of the petitioner is time barred and therefore she cannot be given appointment as claimed by petitioner. Thereafter, the petitioner again applied on 2nd February, 1995 stating that the petitioner was unaware of the provision of making the application within one year and further stated that she has two minor children and does no have any source of livelihood and therefore her application may be considered sympathetically. In response, the respondent No.1 has issued office order No.425/97 appointing the petitioner as part-time Water Woman at Ankleshwar depot at monthly salary of Rs.1012.40 for three months. After completion of three months, similar kind of another office order was given for further three months and again similar office order was issued on 27th January, 1998 appointing her as part time water woman at Hansot Control Point under Ankleshwar depot till further order. Thereafter the petitioner again made application on 23rd November, 1998 to appoint her as Peon on sympathetic ground and under the provisions of the Clause 30 of the Labour Settlement as it has become extremely difficult to maintain her family in poor salary of Rs.1012/-. However, the respondent No.1 gave reply on 17th May, 1999 that the application of the petitioner was time barred. It is pertinent to note that it is case of the respondent Corporation that the Corporation has shown grace and sympathy in giving appointment as part-time water woman and she should not make any further application in the subject matter. Thereafter, the petitioner had made representation on 19th January, 2000 addressed to the respondent No.2 pointing out similar circumstances that other widows who have passed 7th Standard have been appointed as Peon. Thus, the action of the respondent Corporation denying full time compassionate appointment on the post of Writer has been challenged by way of

present petition.

#. The respondent has filed Affidavit-in-reply, wherein it has been pointed out that at present the petitioner is working as part-time Water Woman and receiving salary of Rs.1709/- as prescribed by the respondent No.2 authority. The contention raised by the respondent Corporation is that according to the policy of the Corporation, the application for appointment in the cadre of Writer was delayed and there is no provisions to condone such delay and as such delayed applications are required to be rejected straightaway. Thus, the case of the petitioner was not considered for the post of Writer on compassionate ground and the same is rejected accordingly. However, according the respondent Corporation, the case of the petitioner was sympathetically considered and she was appointed as Part Timer and accordingly the respondent No.2 has acted in accordance with the Rules and Regulations as well as sympathetic view is also taken.

#. Learned advocate Ms.Parul Patel appearing on behalf of the petitioner has pointed out that considering the relevant General Standing Order No.659 / 79 [`GSO' for short], wherein time limit of one year has been prescribed, which in fact apply in case of minor son and daughter of the deceased employee. However, Ms.Parul Patel, learned advocate has submitted that as such there is no provision in the said GSO which apply to widow of deceased employee. It is further submitted that on the contrary the object of said Circular is to give immediate appointment on death of such employee and therefore, the case of the petitioner is required to be reconsidered by the Corporation for regular appointment on the post of Writer.

#. Learned advocate Mr.Barot appearing on behalf of the respondent Corporation has submitted that according to this GSO No.659 / 79 dated 6th April, 1979, the policy is laid down in respect of Class I & II officers and equally the said GSO applies to Class III & IV employees. However, learned advocate Mr.Barot has pointed out that object behind the said GSO is to give compassionate appointment to legal heirs of the deceased but for that the legal heir should apply in time and the application preferred by the petitioner was not in time and therefore, the same was rightly rejected by the respondent Corporation.

#. I have considered submissions of learned advocates for the parties. Considering the provisions of the

General Standing Order No.659/79 dated 6th April, 1979, the last three lines apply to Class III & IV employees but in fact, this provisions applicable in case of son and daughter if they were not major at the time of death of employee. According to the said GSO, the legal heir should have to apply within one year from the death of such employee but according to my opinion, as such there is no clear provisions in respect of widow. It is also noticed that as such there is no clear provision that the Widow of the deceased employee should apply for compassionate appointment within period of one year from the date of death of such employee. Therefore, considering all these factual aspects of the matter, in view of this Court, the respondent Corporation has taken technical stand in the matter while rejecting the application of the petitioner and not examined the matter on merits whether the petitioner is entitled to compassionate appointment as regular appointment on the post of Writer. Therefore, in my opinion, the case of the petitioner requires reconsideration and the order passed by the Corporation on 20th January, 1995 rejecting the case of the petitioner only on the ground of limitation is required to be quashed and set aside. This Court is also view that the respondent Corporation requires to reconsider the case of the petitioner without consideration the limitation of filing such application by the petitioner and the respondent Corporation should consider the application of the petitioner on merits as per the policy laid down in GSO No.659/1979 dated 6th April, 1979.

#. In view of above discussion, the petition succeeds and the same is allowed accordingly. The impugned order dated 20th January, 1995 passed by the Divisional Controller, S.T.Depot Himmatnagar is hereby quashed and set aside with direction to the respondent Corporation to reconsider the case of the petitioner dated 24th November, 1994 and other subsequent similar applications for compassionate appointment on the post of Writer or any other post while taking into consideration the relevant GSO No.659 / 79 dated 6th April, 1979 and to pass appropriate orders for regular appointment of the petitioner on the post of Writer or any other post within period of two months from the date of receiving the copy of this order. Rule is made absolute with no order as to costs.

Date : 7-1-2002 [H.K.Rathod, J.]

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